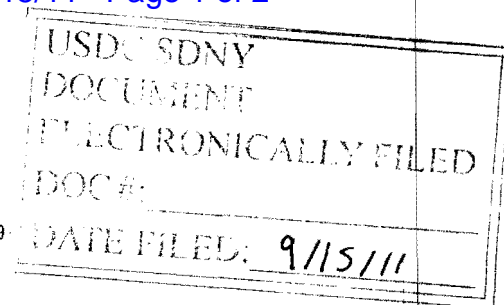


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September 13, 2011

BY HAND

MEMO ENDORSED

RS-2

Honorable Richard M. Berman
United States Courthouse
500 Pearl Street, Room 21B
New York, New York 10007

Emmet & Co., Inc. and First Manhattan Co. v. Catholic Health East and Merrill Lynch & Co., Inc., No. 11-Civ.-3272 (RMB) (AJP)

Dear Judge Berman:

We represent defendant Catholic Health East ("CHE"). On behalf of CHE and co-defendant Merrill Lynch & Co., Inc. ("Merrill Lynch"), we write with respect to the conference scheduled for September 20, 2011.

The September 20 conference originally was set as a settlement conference with principals. At the time the conference was set, all discovery was scheduled to be completed prior to the conference. Since that time, however, plaintiff Emmet & Co., Inc. decided not to serve the then existing complaint on any defendant and to file a First Amended Complaint adding an additional plaintiff and an additional defendant. As a result, by order dated July 7, 2011, Magistrate Judge Peck set November 14, 2011 as the new deadline for completion of fact discovery.

After the First Amended Complaint was filed (on July 27, 2011), plaintiffs submitted a letter seeking a pre-motion conference with respect to a proposed motion for leave to file a second amended complaint and to remand the case back to state court. In addition, defendants submitted letters seeking a pre-motion conference with respect to proposed motions to dismiss. Pursuant to Your Honor's endorsement of those letters, the proposed motions will be addressed at the September 20 conference.

We are writing to request that the September 20 conference not be deemed a settlement conference requiring the attendance of principals. In light of the new discovery cutoff, the potentially dispositive motions, and the open issue regarding subject matter jurisdiction, defendants believe that it would be more fruitful to have a settlement conference at a later date, and to limit the September 20 conference to a discussion of the motions and related matters.

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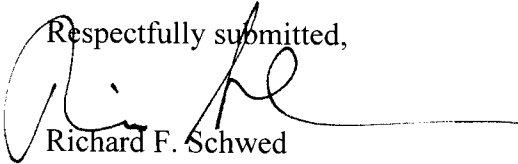
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Hon. Richard M. Berman
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September 13, 2011


We have consulted with counsel for plaintiffs and have been informed that plaintiffs do not object to this request.

Respectfully submitted,



Richard F. Schwed

cc: Hon. Andrew J. Peck (by hand)
Aaron H. Marks, Esq. (via email)
Luke A. Connelly, Esq. (via email)

<u>Application respectfully denied.</u>	
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SO ORDERED:	
Date: <u>9/14/11</u>	
Richard M. Berman, U.S.D.J.	